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Paper No.44

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In re Patent No.5,582,989 :
Issue Date: December 10, 1996 :
Application No. 08/315,673 :
Filed: September 30, 1994 :
Attorney Docket No. D5050CCC :

**SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS**

NOTICE

A submission on January 20, 1998, of the fee difference between a small entity fee(s) paid and the non-small entity fee(s) due at the time of the submission, has been received. This is a notice that the fee deficiencies may not be accepted at this time.

Note that in DH Technology v. Synergystex International, Inc., 937 F. Supp. 902, 40 USPQ2d 1754 (N.D. Cal. 1996), the District Court for the Northern District of California held that the submission of the full issue fee under 37 CFR 1.28(c) must also meet the full revival requirements of 37 CFR 1.317. The requirements for acceptance under 37 CFR 1.317 are similar to the provisions for revival under 37 CFR 1.137 and the reinstatement proceedings under 37 CFR 1.378. DH Technology is currently under appeal to the Court of Appeals for the Federal Circuit (CAFC).

In view of the fact that all conditions for acceptance of the 37 CFR 1.28 request should be met before granting the relief requested and it is not clear, at this point, whether a petition to revive is also needed as part of the submission of the fee difference, the additional fee, while received, cannot be accepted at this time. The Patentee or, if applicable, the Patent Owner may wish to follow the decision in DH Technology and file a petition to revive the application if acceptance of the fee deficiency at this point is desired. Otherwise, in accordance with the *Official Gazette* Notice at 1198 OG 27 (May 6, 1997), the acceptance of the fee deficiency will be held in abeyance pending a CAFC decision as explained above.

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The application will be retained in the Office of Petitions to await further action.

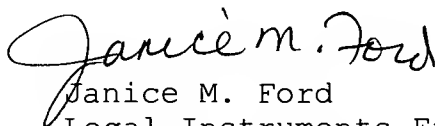
Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
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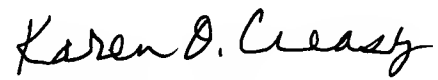
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